IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4013 of 1995
With
FIRST APPEAL No. 4020 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDER VALLABHDAS SHAH - Appellant(s)
Versus
RAJIBEN PUNABHAI & 7 - Defendant(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
MR YATIN SONI for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 6.
MR SHAKEEL A QURESHI for Defendant(s) : 7,
MR RAJNI H MEHTA for Defendant(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/02/2007

ORAL COMMON JUDGMENT :

Since both these appeals arise from the common judgment and in respect of the same accident, they are heard together and now they are being disposed of by this common judgment. Both these appeals have been filed by original opponent no.2, the owner of the offending vehicle, who has been saddled with the liability to pay compensation, since the insurance company of the vehicle has been exonerated. First Appeal No. 4013 of 1995 has been filed to challenge award made in M.A.C. Petition No. 234/1989 by the Motor Accident Claims Tribunal [Main], Junagadh dated 19th April, 1995; whereas First Appeal No. 4020 of 1995 has been filed in M.A.C. Petition No. 345/1989.

2. The accident in question occurred on 15th June, 1984 at about 10.00 a.m., on Vanthali – Junagadh road near Girnar Khadsari Factory. The victims of the accident were traveling in a matador, a goods vehicle, bearing registration No. GTW 5349. According to them, due to rash and negligent driving of the driver of the vehicle, the vehicle went off the road and toppled down. As a result of the same, the inmates of the vehicle received injuries. So far as claimant of M.A.C. Petition No. 345 of 1989 is concerned, he filed claim petition for obtaining compensation of Rs.50,000/-; whereas M.A.C. Petition No. 234 of 1989 has been filed by the heirs and legal representatives of deceased Puna Kana, who had earlier preferred proceedings under the Act for obtaining compensation, being M.A.C. Petition No. 361 of 1984, but during the pendency of the proceedings he expired due to injuries received by him in the

accident. On his demise, the proceedings of M.A.C. Petition No. 361 of 1984 got abated, but the heirs and legal representatives of deceased Puna Kana preferred another petition being M.A.C. Petition No. 234 of 1989, wherein they have claimed compensation of Rs.1,25,000/-.

2.1. On the basis of the material produced before it, the Tribunal held that the accident occurred due to negligence of driver of the offending vehicle. It also held that the victims received injuries due to negligent act of the driver of the appellant. The vehicle, at the relevant time, was insured with National Insurance Co. Ltd., i.e., present respondent no. 8 in First Appeal No. 4013 of 1995, but the Tribunal exonerated it from its liability to pay the compensation on the ground that the victims were unauthorized passengers travelling in a goods vehicle and, therefore, their risk was not covered. The Tribunal saddled the appellant, who is the insured and owner of the offending vehicle, with the liability to pay compensation to the victims. Hence, these appeals.

3. I have heard Mr. Lakhani, learned advocate for the appellant, Ms. Maria Dalal, learned advocate for respondent no. 1 and Mr. Sunil Parikh, learned advocate for Mr. RH Mehta for respondent – Insurance Company. I have also perused the record of the case. The sole submission of Mr. Lakhani is that the insurance company has wrongly been exonerated since the victims who were travelling in the goods vehicle with their luggage and, therefore, risk was

required to be covered. In a decision rendered by the Apex Court in the case of Mallawwa v/s. Oriental Insurance Company Ltd., reported in 1999 ACJ p.1, the Apex Court has held that considering the provisions of Act of 1939, the insurance company was not liable to cover the risk for the death of or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously. In view of the same, this submission of Mr. Lakhani cannot be accepted. Hence, these appeals are dismissed.

[Akshay H Mehta, J.]

* Pansala.